

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**GREGORY J. HALL,
INDIVIDUALLY AND AS NEXT
FRIEND FOR STACIA UTLEY**

APPELLANT,

**v.
AMBER FRALA UTLEY**

RESPONDENT.

DOCKET NUMBER WD76417

DATE: August 26, 2014

Appeal From:

Jackson County Circuit Court
The Honorable Christine T. Sill-Rogers, Judge

Appellate Judges:

Division Four: Alok Ahuja, Chief Judge, Presiding, Cynthia L. Martin, Judge and Wayne P. Strothmann, Special Judge

Attorneys:

Mary-Corinne Corley, Kansas City, MO, for appellant.

Kimberly J. Carlin and Nancy A. Garris, Independence, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Four: Alok Ahuja, Chief Judge, Presiding, Cynthia L. Martin, Judge and Wayne P. Strothmann, Special Judge

Gregory Hall appeals from the trial court's judgment of paternity that ordered the minor child to be placed in the sole legal custody of Amber Frala Utley, ordered the minor child to be placed in the joint physical custody of Hall and Utley, and ordered Hall to pay child support. Hall asserts that the trial court erred in six respects: (1) in failing to grant a new trial or amend the judgment regarding the calculation of child support based on newly discovered evidence; (2) in granting Utley sole legal custody; (3) in failing to make specific findings in its judgment as requested by Hall; (4) in designating Utley's address as the child's principal address; (5) in issuing a protective order regarding Utley's medical condition; and (6) in admitting hearsay evidence.

**AFFIRM AND REMAND TO TRIAL COURT FOR CONSIDERATION OF UTLEY'S
REQUEST FOR ATTORNEY'S FEES ON APPEAL.**

Division Four holds:

(1) The two pieces of evidence Hall claims are newly discovered do not support a new trial because one piece is cumulative of evidence offered at trial and the other piece could have been discovered prior to trial with due diligence.

(2) Hall couches his point on appeal in terms of the weight of the evidence, but the substance of his argument asks us to reject Utley's testimony and evidence as not credible. We will not disturb the trial court's credibility findings on appeal.

(3) The issues raised by Hall on appeal do not implicate the subject matter of the requests for findings of fact for which no findings were made. Thus, the absent findings do not interfere with appellate review so that reversal is not appropriate.

(4) Hall's argument regarding the designation of the child's principal address is based on the faulty premise that the trial court must consider the eight "best interests" factors identified in section 452.375.2 in making its determination. That statute concerns custody, not the child's

principal address. Further, Hall's argument never addresses how or in what manner the trial court erred in designating Utley's residence as the child's principal address so that the point is abandoned on appeal.

(5) Hall does not include the protective order from which he is appealing in the record on appeal so that this point is unpreserved for review. Nonetheless, Hall never persuasively explains what information he expected to discover or how the allegedly denied discovery would have materially affected the merits of this action, rendering reversal of the trial court's judgment inappropriate.

(6) Hall's point on appeal fails to establish reversible error. There is no indication in the trial court's judgment that Utley's son's reaction to the private investigator played any role in the trial court's decision to award Utley sole legal custody of the child.

Opinion by Cynthia L. Martin, Judge

August 26, 2014

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